

Applicant: Cohen et al.
Application Serial No.: 10/069,682
Filing Date: August 7, 2002
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REMARKS

Reconsideration of the application as amended is respectfully requested.

Claims 51 and 54-58 are in the application. As indicated in the Office Action, claim 51 was elected in response to a previous election requirement. Affirmation of this election is hereby made. Accordingly, non-elected claims 1-50 and 52 have been canceled. It is also noted that claim 53 was cancelled in a Preliminary Amendment dated February 22, 2002 and originally filed with the subject application. Claim 53 has been re-presented as new claim 54 and depending from claim 51. In addition, new claims 55-58, depending from claim 51, have also been added.

In the Office Action, the Examiner objected to the drawings for allegedly omitting reference characters. The Examiner's attention is drawn to the copy of the "AMENDMENT UNDER ARTICLE 34" which was filed during prosecution of the parent PCT application and provided with the original filing of the subject application. This amendment includes formal drawings with reference characters and was entered during the course of prosecution of the PCT application. Accordingly, the formal drawings with reference characters were part of the subject application upon national entry into the United States. Entry of the drawing amendment is acknowledged in the copy of the International Preliminary Examination Report which was

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submitted with the Information Disclosure Statement filed on December 19, 2002. It is respectfully submitted that the drawings do include reference characters and are in accord with U.S. patent practice.

The Examiner rejected claim 51 under 35 U.S.C. §102(e) as being anticipated by Fuchs (U.S. Patent No. 6,062,430). In formulating the rejection, the Examiner cited Figure 12 and corresponding text at column 7, line 45-column 18, line 20. The Examiner asserted that element 15m in Fuchs, shown in Figure 12, corresponds to the claim limitation of a deflectable diaphragm.

Fuchs is directed to a dispensing container with variable volume compensation. With the assembly of Figure 12, two separate vessel bodies 2m and pumps 40m are joined together by cover 50m and element 65m. Within each of the vessel bodies 2m is disposed a container 15m which is secured to a mounting support 18m located opposite the respective pump 40m. As clearly shown in Figure 12, no portion of either of the containers 15m is exposed externally of the structure.

Amended claim 51 is directed to a pump, which includes a pump body, a fluid reservoir formed in the pump body, and "a deflectable diaphragm mounted in a wall of said pump body so

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as to be exposed externally of said pump". As noted above, the containers 15m are wholly contained within the structure and are not at all exposed externally thereof. With the invention of claim 51, a deflectable diaphragm can be acted upon by a user in initially reducing the volume of the reservoir, thus, facilitating priming of the pump. The containers 15m of Fuchs are not at all related to this purpose. Moreover, there is no suggestion or disclosure in Fuchs to expose externally the containers 15m. It is respectfully submitted that claim 51, along with dependent claims 54-58, are patentable over Fuchs.

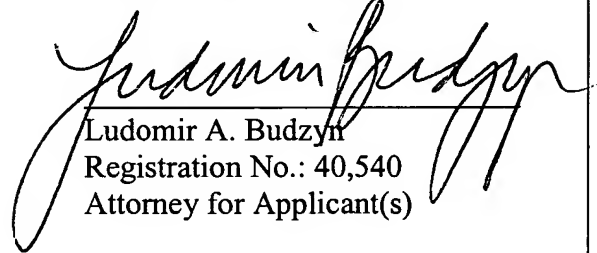
The Examiner rejected claim 53 under 35 U.S.C. §103(a) as being unpatentable over Fuchs in view of Jouillat (U.S. Patent No. 5,388,727). The Examiner acknowledged that Fuchs does not disclose the use of a pre-compression pump and relied on Jouillat to overcome this deficiency. As pointed out above, claim 53 has been canceled but re-presented as claim 54. Accordingly, applicants respond to the original rejection of claim 53 in the context of claim 54.

Jouillat is directed to a pump structure which has no corresponding element to the deflectable diaphragm. As such, Jouillat does not overcome the deficiency of Fuchs noted above with respect to claim 51. It is respectfully submitted that claim 54, as depending from claim 51, is patentable over Fuchs and Jouillat, each taken alone or in combination.

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Favorable action is earnestly solicited. If there are any questions or if additional information is required, the Examiner is respectfully requested to contact applicants' attorney at the number listed below.

Respectfully submitted,



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